

housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23860, Apr. 30, 1998; 64 FR 13057, Mar. 16, 1999]

EFFECTIVE DATE NOTE: At 64 FR 13057, Mar. 16, 1999, § 982.352 was amended by revising paragraph (a)(6), effective Apr. 15, 1999. For the convenience of the user, the superseded text is set forth as follows:

**§ 982.352 Eligible housing.**

(a) \* \* \*

(6) A unit occupied by its owners or by a person with any interest in the dwelling unit. (However, assistance may be provided for a family residing in a cooperative. In the certificate program, assistance may be provided to the owner of a manufactured home leasing a manufactured home space. In the case of shared housing, an owner unrelated to the assisted family may reside in the unit, but assistance may not be paid on behalf of the resident owner.); and

\* \* \* \* \*

**§ 982.353 Where family can lease a unit with tenant-based assistance.**

(a) *Assistance in the initial HA jurisdiction.* The family may receive tenant-based assistance to lease a unit located anywhere in the jurisdiction (as determined by State and local law) of the initial HA. HUD may nevertheless restrict the family's right to lease such a unit anywhere in such jurisdiction if HUD determines that limitations on a family's opportunity to select among available units in that jurisdiction are appropriate to achieve desegregation goals in accordance with obligations generated by a court order or consent decree.

(b) *Portability: Assistance outside the initial HA jurisdiction.* Except as provided in paragraph (c) or (d) of this section, the family may receive tenant-based assistance to lease a unit outside the initial HA jurisdiction:

(1) In the same State as the initial HA;

(2) In the same metropolitan statistical area (MSA) as the initial HA, but in a different State;

(3) In an MSA that is next to the same MSA as the initial HA, but in a different State; or

(4) In the jurisdiction of an HA anywhere in the United States that is administering a tenant-based program.

(c) *Nonresident applicants.* (1) This paragraph (c) applies if neither the household head or spouse of an assisted family already had a "domicile" (legal residence) in the jurisdiction of the initial HA at the time when the family first submitted an application for participation in the program to the initial HA.

(2) During the 12 month period from the time when the family is admitted to the program, the family does not have any right to lease a unit outside the initial HA jurisdiction. During this period, the family may lease a unit located anywhere in the jurisdiction of the initial HA.

(3) If both the initial HA and a receiving HA agree, the family may lease a unit outside the HA jurisdiction under portability procedures.

(d) *Income eligibility.* (1) For admission to the certificate or voucher program, a family must be income eligible in the area where the family initially leases a unit with assistance in the certificate or voucher program.

(2) A portable family transferring between the certificate and voucher programs must be income-eligible for the new program in the area where the family leases an assisted unit. This requirement applies if the family is either:

(i) Transferring from the initial HA certificate program to the receiving HA voucher program; or

(ii) Transferring from the initial HA voucher program to the receiving HA certificate program.

(3) If a portable family was already a participant in the initial HA certificate or voucher program, income eligibility is not redetermined unless the family transfers between the programs.

(e) *Leasing in-place.* If the dwelling unit is approvable, a family may select the dwelling unit occupied by the family before selection for participation in the program.

(f) *Freedom of choice.* The HA may not directly or indirectly reduce the family's opportunity to select among

available units except as provided in paragraph (a) of this section, or elsewhere in this part 982 (e.g. prohibition on use of ineligible housing, housing not meeting HQS, or housing for which the contract rent (certificate program) or rent to owner (voucher program) exceeds a reasonable rent).

[60 FR 34695, July 3, 1995, as amended at 61 FR 27163, May 30, 1996; 61 FR 42131, Aug. 13, 1996]

**§ 982.354 Portability: Administration by initial HA outside the initial HA jurisdiction.**

(a) When a family moves under portability (in accordance with § 982.353(b)) to an area outside the initial HA jurisdiction, the initial HA must administer assistance for the family if:

(1) The unit is located within the same State as the initial HA, in the same metropolitan statistical area (MSA) as the initial HA (but in a different State), or in an MSA that is next to the same MSA as the initial HA (but in a different State); and

(2) No other HA with a tenant-based program has jurisdiction in the area where the unit is located.

(b) In these conditions, the family remains in the program of the initial HA. The initial HA has the same responsibilities for administration of assistance for the family living outside the HA jurisdiction as for other families assisted by the HA, within the HA jurisdiction. For the purpose of permitting HA administration of program assistance for the family in the area outside of the HA jurisdiction as defined by State and local law (and thereby to satisfy the family's right to portability under federal law), the federal law and this regulation preempt limits on the HA jurisdiction under State and local law.

(c) The initial HA may choose to use another HA, a private management entity or other contractor or agent to help the initial HA administer assistance outside the HA jurisdiction as defined by State and local law.

**§ 982.355 Portability: Administration by receiving HA.**

(a) When a family moves under portability (in accordance with § 982.353(b)) to an area outside the initial HA juris-

diction, another HA (the "receiving HA") must administer assistance for the family if an HA with a tenant-based program has jurisdiction in the area where the unit is located.

(b)(1) In these conditions, an HA with jurisdiction in the area where the family wants to lease a unit must issue the family a certificate or voucher. If there is more than one such HA, the initial HA may choose the receiving HA.

(2) If the family was receiving assistance under the initial HA certificate program, but is ineligible for admission to the voucher program, a receiving HA must provide continued assistance under the certificate program. If the family was receiving assistance under the initial HA voucher program, but is ineligible for admission to the certificate program, a receiving HA must provide continued assistance under the voucher program.

(3) If a receiving HA is absorbing the family into its own program (i.e., providing assistance without billing the initial HA), the receiving HA has the choice of assisting the family under either the certificate or voucher program. If a receiving HA is not absorbing the family into its own program, the receiving HA must assist the family under the same program (certificate program or voucher program) as the initial HA.

(c) *Portability procedures.* (1) The initial HA must determine whether the family is income-eligible in the area where the family wants to lease a unit.

(2) The initial HA must advise the family how to contact and request assistance from the receiving HA. The initial HA must promptly notify the receiving HA to expect the family.

(3) The family must promptly contact the receiving HA, and comply with receiving HA procedures for incoming portable families.

(4) The initial HA must give the receiving HA the most recent HUD Form 50058 (Family Report) for the family, and related verification information. If the receiving HA opts to conduct a new reexamination, the receiving HA may not delay issuing the family a voucher or certificate or otherwise delay approval of a unit unless the recertification is necessary to determine income eligibility.